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CONSIDERATION OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

Note on the future role of the Working Group by the Chairperson-Rapporteur of the Working Group on Indigenous Populations, Ms. Erica-Irene Daes

1. At its tenth session, the Working Group on Indigenous Populations decided that the "Future role of the Working Group" should be considered as a separate agenda item (see E/CN.4/Sub.2/1992/33, para. 196). Subsequently, the Chairperson-Rapporteur prepared a note containing a brief overview of the mandate and activities of the Working Group and, in the light of that overview, proposed possible areas and subjects for consideration as to the future role and work of the Working Group (E/CN.4/Sub.2/AC.4/1993/8).

2. Following the discussions that took place under this item during its eleventh session, the Working Group decided to retain the "Future role of the Working Group" as a separate agenda item and requested one of its members, Mr. Miguel Alfonso Martínez, to update and supplement the note prepared by the Chairperson-Rapporteur (E/CN.4/Sub.2/AC.4/1994/10). This working paper first clarifies the current status of the Working Group over which some confusion apparently existed and, second, comments on and adds to the proposals made by the Chairperson-Rapporteur. This working paper and the above-mentioned note by the Chairperson-Rapporteur formed the basis for the discussions on the future role of the Working Group which took place during its twelfth session.

3. The present note has been drafted to facilitate further discussion and consideration of this item during the thirteenth session of the Working Group and is based on the above-mentioned papers and the discussions which took place under the relevant agenda item during the eleventh and twelfth sessions of the Working Group.

4. From the outset, it has to be reiterated that the mandate of the Working Group on Indigenous Populations, and therefore the Working Group itself, is of an indefinite nature. Termination or revision of this mandate can only take place on the basis of a decision of the Economic and Social Council, which established the Working Group.

5. The discussion concerning the status of the Working Group has arisen because of the language contained in the Vienna Declaration and Programme of Action (A/CONF.157/23), adopted by the World Conference on Human Rights, which stated that "the establishment of a permanent forum for indigenous people in the United Nations system should be considered" and recommended that the Commission on Human Rights should "consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on the rights of indigenous people". This language suggests that the Working Group is somehow not "permanent" and that its mandate needs renewal. However, as demonstrated by Mr. Alfonso Martínez in his working paper, this is not the case. The decision by which the Economic and Social Council established the Working Group does not set a time-limit (resolution 1982/34 of 7 May 1982). In addition, the nature of its mandate, that is to "review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations" and to "give special attention to the evolution of standards concerning the rights of indigenous populations", does not imply any such limit. The mere completion of the draft declaration does not alter this, as was pointed out by the Chairperson-Rapporteur in her aforementioned note. Furthermore, in resolution 1995/31 of 3 March 1995 the Commission on Human Rights urged the Working Group "to continue its comprehensive review of developments and of the situation and aspirations of indigenous people throughout the world", thus reinforcing the importance it attaches to this part of the work of the Working Group.

6. The mandate of the Working Group is broad and flexible and allows the Working Group to propose new activities which may subsequently be approved by its parent bodies. In recent years the Working Group has made relevant proposals through the Subcommission to the Commission on Human Rights and the General Assembly, and has taken up such questions as the International Year of the World's Indigenous People, the International Decade of the World's Indigenous People and the proposed permanent forum for indigenous people. Together with the two established parts of its mandate ("review of developments" and "standard-setting"), the Working Group can consider its future work under these broad headings.

Consideration of new activities under the agenda item "Standard-setting"

7. Within the area of standard-setting, a certain role could be played by the Working Group in providing a relevant commentary on the provisions of the draft declaration or on concepts and terms used in the draft, as it moves up the hierarchical ladder of the United Nations before adoption by the

General Assembly. In this respect, it is important to recall that the Working Group is the only forum within the United Nations system where indigenous people can participate freely and raise issues of concern to them. The new working group to be established by the Commission on Human Rights to elaborate further the draft declaration does not allow the same level of participation.

8. The Working Group may also wish to consider whether it is timely to begin considering other standard-setting activities. For example, certain indigenous representatives have expressed an interest in a future elaboration of a convention. Other standard-setting activities can be envisaged in the areas in which studies are currently being undertaken or may be undertaken in the future.

Consideration of new activities under the agenda item "Review of developments"

9. With regard to the review of developments it may be observed that, over the years, the Working Group and the observer Governments concerned have received detailed written information and heard numerous statements from Governments, indigenous peoples, intergovernmental and non-governmental organizations in this respect. The information provided is welcomed by members of the Working Group because it greatly assists them and all the participants in understanding the situation of indigenous peoples and recent developments affecting them. As a result, this vital contribution from the participants, it may also be noted that members are much better informed about the history, political background and broad aspirations and vital needs of indigenous peoples than hitherto.

10. For this reason, the Chairperson-Rapporteur considers that, in order to enhance the dissemination and accessibility of this valuable information, it could be envisaged that a periodic thematic report or indigenous yearbook might be published, based on the themes and topics brought out in this written and oral information. Participants in the Working Group would be encouraged to provide data on specific themes. The circulation to the United Nations system and sale to the public of a more focused report would contribute to a greater awareness of the problems with which indigenous peoples are faced and the work of the United Nations in this respect. Furthermore, it could serve as a stimulus for study and research activities.

New activities undertaken at the request of parent bodies of the Working Group

11. In addition to the tasks the Working Group carries out and develops under its existing mandate, certain other matters have recently been entrusted to it. In resolution 48/163 of 21 December 1993 the General Assembly entrusted the Working Group with an important role in the preparatory phase of the International Decade of the World's Indigenous People, a role which was subsequently confirmed in Commission on Human Rights resolution 1994/26 of 4 March 1994, General Assembly resolution 49/214 of 23 December 1994 and Commission on Human Rights resolution 1995/28 of 3 March 1995.

12. The Working Group, with its long-standing expertise and accessibility to indigenous organizations and other interested parties, is well placed to undertake preparatory or other activities related to the Decade. In future

years, such activities could include an evaluation of the implementation and results of the programme of activities of the International Decade as approved by the General Assembly, identification of obstacles to successful implementation of the goal of the Decade, and suggestions for possible supplementary activities that might be included in the programme of activities.

13. In its resolution 1995/30 of 3 March 1995, the Commission on Human Rights recommended that a workshop be held on the possible establishment of a permanent forum and that the outcome be transmitted to the Working Group. For this reason, the Working Group is including an item on the said question on its agenda. It may be expected that consultation among the various interested parties concerning the permanent forum will be comprehensive. The Working Group should, therefore, retain this item on its agenda to allow members of the Working Group, as well as representatives of indigenous organizations and observer Governments, to offer their views and comments.

14. The Working Group has successfully generated ideas and made recommendations through its parent bodies on a large number of themes. It should not neglect this important role as the "think tank" on indigenous questions in the United Nations system. Consideration may be given to stimulating United Nations bodies such as the United Nations Development Programme, the United Nations University or the United Nations Research Institute for Social Development to carry out studies on matters of interest to participants. Reference can be made to the useful reports made in previous years by the United Nations Centre on Transnational Corporations as helpful precedents. Further research activities may also be carried out by the members of the Subcommission itself. It has been stated, for example, that the important study of the problem of discrimination against indigenous populations (E/CN.4/1986/7 and Add.1-4) by the Special Rapporteur, Mr. Martínez Cobo, could be updated or that a similar, contemporary, broad-based report could be prepared during the International Decade of the World's Indigenous People. In this connection, the recommendation contained in General Assembly resolution 48/133 of 20 December 1993 could be borne in mind. In paragraph 10 of that resolution, the Assembly noted that there was a continuing need within the United Nations system to aggregate data specific to indigenous people by means of enhancing and facilitating the coordination capabilities of Member States for collecting and analysing such data.

15. Finally, it may be recalled that the Working Group has recommended on a number of occasions that its future sessions take place, if possible, outside Geneva and in particular in regions where many indigenous people live. This remains an aspiration of the Working Group which the Chairperson-Rapporteur hopes will be achieved as soon as the financial situation of the United Nations allows.